

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BLUEFIELD DIVISION**

TISON JUSTICE GENTRY,

Plaintiff,

v.

CIVIL ACTION NO. 1:12-cv-08557

SPS, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

The Court has reviewed the Plaintiff's *Motion of Dismiss[al]* (Document 17) filed on January 4, 2013, as well as the respective responses of the Defendants (Documents 20, 21 and 22).

By *Standing Order* (Document 5) entered on December 7, 2012, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On January 29, 2013, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 23) wherein it is recommend that this Court grant the Plaintiff's *Motion to Dismiss*, dismiss the Plaintiff's *Complaint* without prejudice, and remove this matter from the Court's docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by February 15, 2013.


No party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the

factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Plaintiff's *Motion to Dismiss* (Document 17) is **GRANTED**, the Plaintiff's *Complaint* (Document 1, pp. 9-12) is **DISMISSED WITHOUT PREJUDICE**, and this matter is **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: February 19, 2013

  
IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA